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No. 93-1636

IN THE

Supreme Court of the United States

October Term, 1994

TOM SWINT, *Et Al.*,

Petitioners,

V.

CHAMBERS COUNTY COMMISSION, *Et Al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF THE SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION AS AMICUS CURIAE

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QUESTIONS PRESENTED

Whether a county sheriff is a final policymaker for his/her county in law enforcement matters for purposes of county constitutional tort liability under 42 U.S.C. 1983 where the sheriff is the ultimate authority for county law enforcement policy?

A) Whether the acts and edicts of a county sheriff performing traditional law enforcement functions represent official county policy where the county sheriff's department is the exclusive provider of law enforcement services within the county?

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TOM SWINT, *Et. Al.*,

Petitioners

v.

CHAMBERS COUNTY COMMISSION, *Et. Al.*,

Respondent

On Writ of Certiorari To The
United States Court of Appeals
For The Eleventh Circuit

BRIEF OF THE SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The Southern States Police Benevolent Association (hereafter SSPBA) is a non-profit association comprised of over twenty thousand law enforcement officers and related public employees in ten southern states. SSPBA and its various state affiliates engage in various types of advocacy, lobbying, litigation and scientific analyses of various law enforcement issues. SSPBA promotes improved law enforcement and constitutional protections for everyone.

SSPBA and its members are vitally interested in the grave constitutional issues before this Court. Law enforcement officers are frequently victims of constitutional torts, often in the employment context. SSPBA has litigated a number of cases involving similar issues of county liability for the constitutional torts of a sheriff. SSPBA accordingly submits this brief to assist this Court in its resolution of this important case.[1]

STATEMENT OF THE CASE

Amici adopt the Statement of the Case and Facts as presented by Petitioner.

SUMMARY OF ARGUMENT

Sheriffs are typically the final repository of law enforcement policy for counties throughout America. The acts and edicts of a county sheriff performing traditional law enforcement functions in a county where the sheriff's department is the exclusive provider of law enforcement services represent the official policy of that county.

The overwhelming weight of substantially settled circuit court authority holds that counties may be liable for constitutional torts of its sheriff whenever the sheriff is performing a traditional law enforcement function. Accordingly, this Court should reverse the Eleventh Circuit below, and alternatively adopt the approach taken in other

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[1] The parties have consented to the filing of this brief amicus curiae. Letters indicating their consent have been filed with the Clerk of Court.

cases addressed *infra*. The decision below is an aberration and is inconsistent with this Court's decisions in *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), *Pembaur v. City of Cinncinnati*, 475 U.S. 469 (1986) and *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988). The decision of the Eleventh Circuit below represents a severe restriction upon the rights of victims to challenge often brutal law enforcement tactics necessitating constitutional tort liability against counties.

I. INTRODUCTION ROLE OF SHERIFFS AND COUNTIES

When a sheriff or his deputy commits an actionable constitutional tort while acting in their official capacity, the determinative question of who is responsible and ultimately liable arises. Since sheriffs are governmental actors, they act under color of authority vested in them by their state and local law. Sheriffs are typically held to be **county**, rather than state officials. See, e.g., *Hull v. Oldham*, 104 N.C. App. 29, 407 S.E.2d 611, 618 (1991)(under North Carolina law, sheriffs are county officials, rather than state officials). Thus, the conduct of sheriffs are actionable under 42 U.S.C. 1983 without an Eleventh Amendment bar.

Since sheriffs and their deputies are frequently shielded from personal and individual liability by the doctrine of qualified immunity, and because many sheriffs and their deputies are effectively judgment proof in their individual capacities, the only real and effective remedy for a constitutional tort by the sheriff is a remedy from the County. Since a judgment against a public official in

an official capacity suit is tantamount to a judgment against the governmental entity, *Brandon v. Holt*, 469 U.S. 464 (1985), the decision of the court below would leave victims of police misconduct without an effective remedy.

Consequently, under Respondent's strained view of section 1983 jurisprudence, no entity of government would be financially responsible for the acts of the County sheriff in his official capacity in the performance of law enforcement functions. Such a result is untenable and is inconsistent with this Court's history of affording remedies where important federal rights are contravened.

In most jurisdictions, state law frames the parameters of responsibility for various government functions and overlapping responsibilities among sheriffs and counties.[2] Counties frequently enact local ordinances to further delineate the responsibilities between the sheriff and the county. This structure typically creates layers of state and local law, enacted to serve local conditions and customs, that form the framework of rights and responsibilities of sheriffs and county governments. Frequently, sheriffs are alter egos of the county. Unfortunately, state and local legislation often

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[2] For example, see the North Carolina system, which is set out in a state constitutional and statutory scheme, which appears in scattered sections of the General Statutes. See N.C.G.S. 153A-101 (Board of County Commissioners directs fiscal policy for county), 153A-1-3 (regulating employment practices of sheriffs and counties over deputy sheriffs); chapter 162 which provides numerous sections regulating the sheriff in various areas; N.C.G.S. 162-22 (providing that the sheriff must "have the care and custody of the jail in his county."

do not adequately delineate responsibilities sufficiently clear so that one can readily allocate liability.[3] Often, there are shared obligations which results in shared responsibility and liability. Even where the county is not a direct participant in the conduct giving rise to the complaint, under this Court's teachings in *Pembaur* and other cases, the county is responsible for the conduct of its final policymakers, whoever they may be.

In most American jurisdictions, traditional sheriffs and their sheriff's departments provide law enforcement within their own counties. Unless there is some other county organized police, sheriffs traditionally provide the exclusive law enforcement function for the entire county. When county sheriffs provide the **exclusive** countywide law enforcement services, such sheriffs undoubtedly constitute the final county policymaker for law enforcement matters.

Sheriffs' Departments are supported by their sponsoring counties in numerous and varied ways. Counties typically have statutory responsibilities to provide law enforcement, both directly and indirectly. Counties typically provide law enforcement through their own sheriff, although, metropolitan and other areas also sometimes

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[3] Consequently, there has been substantial litigation of these issues, much of which has to be on a case by case basis in order to properly apply both state and local law to determine who is the final policymaker in a given area. See e.g., *Reid v. Johnston County*, 688 F. Supp. 200, 202 (E.D.N.C. 1988), aff'd, 878 F.2d 430 (4th Cir. 1989)(explaining how the North Carolina statute makes clear that the responsibility for county confinement rests with the county.)

employ police agencies.[4] Counties typically provide the backbone of their sheriff's departments - financially, by hiring personnel, by performing various other personnel functions, by purchasing police equipment, by affording training, by providing law enforcement facilities, among other things. Counties typically have the responsibility of providing a local jail, which are traditionally managed by the sheriff. See *Dotson v. Chester; Heflin v. Stewart County*, 958 F.2d 709, 716-17 (6th Cir. 1992)(section 1983 claim against county for inmate's medical needs valid because sheriff was the sole policymaker for the conduct of jail officials).

Consequently, in every material respect, sheriffs are the final policymaking authority for law enforcement purposes within the County especially where the sheriff's department is the exclusive provider of law enforcement services. See, e.g., *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991); *Buzek v. County of Saunders*, 972 F.2d 992 (8th Cir. 1992); *Turner v. Upton County*, 915 F.2d 133, 136-37 (5th Cir. 1990) and cases cited therein; *Crowder v. Sinyard*, 884 F.2d 804 (5th Cir. 1989); *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985); *Weber v. Dell*, 804 F.2d 796 (2nd Cir. 1986); *Marchses v. Lucas*, 758 F.2d 181 (6th Cir. 1985). These and other compelling circuit court authorities afford substantial history and solid precedent for Petitioner's position. These cases are consistent with this Court's teachings in *Monnel, Pembaur, Praprotnik* and their progeny, which should not be disturbed. The overwhelming weight of circuit court authority is consistent with *Dotson*, therefore generally making counties liable for the constitutional torts of their sheriffs. The Eleventh Circuit decision below is an aberration and a retreat from this Court's precedents. The *Monnel* doctrine has worked well in governing section 1983 claims against counties and sheriffs. Respondents, nor the Eleventh Circuit below, have offered any justification for such a retreat from this Court's traditional constitutional protection.

[4] Where there is an additional countywide law enforcement agency that has jurisdiction, the sheriff may not necessarily still be the final policymaking authority. One would have to examine the delegation of authority to the other countywide law enforcement agency, and contrast that with the authority afforded the sheriff, in order to ascertain section 1983 liability.

II. DECISIONS OF FINAL POLICYMAKING OFFICIALS IN LAW ENFORCEMENT ARE IMPUTABLE TO THE GOVERNMENTAL ENTITY

Governmental liability arises from a deprivation of federal rights caused by any official with final policymaking authority. *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). This Court has made clear that the question of "whether a particular official has 'final policymaking authority' is a question of state law." *Praprotnik*, 485 U.S. at 124. In assessing this question, Justice O'Connor explained how "state law (which may include valid local ordinances and regulations) will always direct a court to some official or body that has the responsibility for making law or setting policy in any given

area of a local government's business." *Id.* at 124.[5] In law enforcement at the local level, it is the county sheriff.

III. *DOTSON V. CHESTER* COMPELS THE COUNTY'S LIABILITY FOR CONSTITUTIONAL TORTS OF SHERIFFS PERFORMING TRADITIONAL LAW ENFORCEMENT FUNCTIONS

In *Dotson*, the Fourth Circuit held that the actions of a Sheriff constituted the final policymaking authority of the County, therefore subjecting the County to liability for the Sheriff's conduct. The court also held that the Sheriff wielded county, as opposed to state, authority. *Dotson* involved an examination of state law and the particular symbiotic relationship between the sheriff and county. Accord *Revene v. Charles County Commissioners,* 882 F.2d 870, 874 (4th Cir. 1989)(Sheriff's Department is an agency of County government).[6] See *Logan*

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[5] As explained by the Fourth Circuit in *Dotson v. Chester*, 937 F.2d at 924, "state and local laws" must be "searched" ... to determine "whether the actions of a county sheriff represent final policymaking authority for the county, thereby creating county liability." *Dotson* explained that "our exploration passes through case law, the county code, state statutes, and state regulations." 937 F.2d at 295.

[6] *Dotson* recounted analysis from a number of leading cases dealing with the issue of holding counties liable for the conduct of Sheriffs. See cases cited at 937 F.2d at 925 - 932, especially *Turner v. Union County,* 915 F.2d 133 (5th Cir. 1990)("County liability under section 1983 must attach ... when the official representing the ultimate repository of power in county makes a deliberate decision..." ; *Zook v. Brown*, 865 F.2d 887, 895 (7th Cir. 1989)(sheriff responsible for employee discipline therefore County liable for Sheriff's conduct).

v. Shealy, 660 F.2d 1007 (4th Cir. 1981)(sheriff's conduct chargeable to county). The same analysis should be applied to the case *sub judice*.

The Fourth Circuit's conclusion in *Dotson* heavily relied upon *Parker v. Williams,* 862 F.2d 1471 (11th Cir. 1989), which held the county liable for the sheriff's employment decisions because the sheriff possessed the "ultimate county authority" with respect to personnel decisions. *Parker* reasoned that "[t]he county need not exercise direct control over the sheriff with respect to the sheriff's hiring decisions in order to be liable under section 1983 for damages caused by those decisions." *Id.* at 1479-80.

IV. SHERIFFS ARE FINAL COUNTY POLICYMAKERS FOR EMPLOYMENT FUNCTIONS WITHIN COUNTY SHERIFF'S DEPARTMENTS

In addition to holding counties liable for the constitutional torts of sheriffs in law enforcement functions, county liability is applicable in other contexts. A plethora of authorities have **uniformly** held that Sheriffs are generally held to be county policymakers for purposes of employment terminations of deputy sheriffs.[7] The scenario

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[7] E.g., *Bouman v. Block,* 940 F.2d 1211, 1231 (9th Cir. 1991)(delegation by County to Sheriff of final policymaking authority for employment matters renders County liable); *Davis v. Mason County,* 927 F.2d 1473 (9th Cir. 1991)(sheriff had final authority for training of deputies); *Marchese v. Lucas,* 758 F.2d 181 (6th Cir. 1985)(sheriff is law enforcement arm of county and therefore makes final policy for county); *Crowder v. Sinyard*

continued on next page

in *Lucas v. O'Loughlin*, 831 F.2d 232 (11th Cir. 1987) presents an appropriate analytical framework for addressing these troubling section 1983 issues. There, the court reasoned that:

> Although elected by virtue of state law, he [the sheriff] was elected to serve the County as Sheriff. In that capacity, he has absolute authority over the appointment and control of his deputies. His and their salaries were paid by local taxation and according to a budget approved by the county commissioners." *Id.* at 235.

Lucas consequently held that the sheriff was the final policymaker with respect to employment of deputies, therefore rendering the County liable for the Sheriff's conduct.[8] In *Buzek v. County of Saunders*, 972 F.2d 992 (8th

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[7] *continued*
854 F.2d 804, 828-29 (5th Cir. 1989)(sheriff as county policymaker); *Weber v. Dell*, 804 F.2d 796 (2nd Cir. 1986)(sheriff as final policymaker for county); *Anderson v. Gutschenritter*, 836 F.2d 346 (7th Cir. 1988). Police agencies typically have delegated employment decisionmaking authority to the Sheriff or police department, therefore making the governmental entity liable for the decisions of the sheriff or chief. E.g., *Larez v. Los Angeles*, 946 F.2d 630 (9th Cir. 1991)

[8] Accord *Williams v. Butler*, 863 F.2d 1398 (8th Cir. 1988)(governmental liability affirmed where there had been an "absolute delegation of authority" for employment matters).

Cir. 1992), the court similarly grappled with the issue of whether a county could be liable for the actions of a sheriff in discharging a deputy for free speech. There, the trial court had rendered a verdict for $127,000 on behalf of the plaintiff deputy against the Sheriff and the County. The deputy had communicated by letter to a judge supporting a criminal defendant on a sentencing matter. The letter angered the Sheriff, who dismissed the deputy. The court held that:

> [Sheriff] Poskochil's broad discretion to set policy as the County's elected Sheriff, and the County Attorney's testimony that [Sheriff] Poskochil had exclusive authority to fire [Deputy] Buzek, adequately support the jury's determination that [Sheriff] Poskochil possessed the discretionary, policymaking authority necessary to hold the county liable for this decision. 972 F.2d at 996.

The decisionmaking structure between the Sheriff and the County in *Buzek* is similar to that in the case *sub judice*. Accord *Click v. Copeland and Bexar County Texas*, 970 F.2d 106 (5th Cir. 1992)(reversing directed verdict for county and sheriff on qualified immunity grounds; remand to determine if sheriff played role as county policymaker).

CONCLUSION

WHEREFORE, for the reasons stated herein and in Petitioner's brief, this Court should reverse the decision below.

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